

REMARKS

Applicants respectfully request reconsideration and allowance of claims 1-7 that are pending in the above-identified patent application.

In paragraph 1 of the Office Action the Oath/Declaration stands objected to because the title of the invention does not match the title of the invention according to the Bib Data Sheet. Applicants submit the title of the invention as filed, "Intervertebral Spacer Device Having a Domed Arch Shaped Spring", is correct and is identical to the title of the invention suggested in paragraph 2 of the Office Action. Applicants submit this objection should be withdrawn.

In paragraph 2 of the Office Action the disclosure stands objected to because of the title (see above) and the CROSS REFERENCE TO RELATED APPLICATIONS required updating to reflect the issuance of U.S. 6,673,113. By the amendment hereinabove applicants submit these objections are overcome.

In paragraph 3 of the Office Action claims 1 and 4 stand objected to for informalities. By the foregoing amendments in accordance with the suggestions of the examiner the applicants submit these objections are overcome.

In paragraphs 4-6 of the Office Action claims 1-7 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,610,092 and over claims 1-7 of U.S. Patent No. 6,669,731. In response applicants submit herewith a suitable terminal disclaimer (and fee) overcoming these rejections.

In paragraphs 7 and 8 of the Office Action claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,179,874 to Cauthen ("Cauthen"). Applicants respectfully traverse the Examiner's rejection.

The present invention is directed to an intervertebral spacer device comprising opposing first and second plate members having disposed therebetween at least one domed arch strip spring restoring force providing element, said element disposed such that a compressive load applied to the external surfaces of said plate members is counteracted by said at least one element.

Given that the claimed domed arch strip spring restoring force providing element provides a restoring force when compressed, Cauthen cannot anticipate the invention as claimed in independent claims 1 or 6. The articulating means 24 of Cauthen specifically "resists axial compression between the first and second elements 20, 22 but allows pivotal movement

therebetween... thus when implanted, ... the articulation means resists axial compression between first and second vertebra 12, 14 along a support axis 44 extending generally along the spinal column...” Cauthen , col. 5 lines 39-47 (emphasis supplied). Thus, Cauthen neither teaches nor suggests providing a domed arch strip spring restoring force providing element, and in fact teaches exactly the opposite.

Since Cauthen does not comprise, teach or suggest employing a domed arch strip spring restoring force providing element as claimed by the applicants, applicants respectfully submit that the Cauthen reference fails to disclose each and every feature of the invention recited in claims 1 and/or 6. Accordingly, Applicants respectfully request that the Examiner withdraw the § 102(b) rejection of claims 1 and 7 over the Cauthen reference. Further, claims 2-5 and 7 are likewise not anticipated by Cauthen vis-a-vis their dependency on claims 1 and 6, respectively.

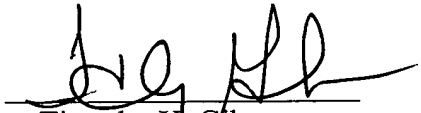
In paragraphs 9 – 10 of the Office Action, the Examiner rejected claims 1-7 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,989,291 to Ralph et al. (“Ralph et al.”) in view of Cauthen. Applicants respectfully traverse the Examiner’s rejection. The Examiner cites the Ralph et al. reference for the purpose of arguing an intervertebral spacer device as disclosed in Ralph et al. may be combined with the intervertebral spacer device comprising at least one domed arch strip spring element of Cauthen to meet the claim limitations of claims 1-7 of the instant application. However, the Examiner acknowledges Ralph et al. does not disclose a spring element as a domed arch strip spring element, and the deficiencies of the Cauthen disclosure are addressed hereinabove. In view of the foregoing, if the combined teachings of the Ralph et al. and Cauthen references are to be used to reject claims 1-7 of the instant application, then the Ralph et al. reference must remedy the deficiencies of the Cauthen reference. Clearly, however, the Ralph et al. reference cannot, and does not, remedy the deficiencies discussed hereinabove with respect to the Cauthen reference. Accordingly, applicants respectfully request that the Examiner withdraw the § 103(a) rejection of claims 1-7 of the instant application.

In view of the foregoing, Applicants submit that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 11-0223 therefore.

Respectfully submitted

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By: 
Timothy X. Gibson
Reg. No. 40,618
KAPLAN & GILMAN, L.L.P.
900 Route 9 North
Woodbridge, NJ 07095
Tel: (732) 634-7634
Attorneys for Applicant